

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 1 and 31

[Federal Acquisition Circular 84-15]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-15 amends the Federal Acquisition Regulation (FAR) with respect to the following: Corporate Aircraft Costs, Public Relations Costs, Compensation for Personal Services, Company Furnished Automobiles, Nominal Changes to FAR 31.2, Employee Morale, Health, Welfare, Food Service, and Dormitory Costs and Credits, Membership Costs, Executive Lobbying Costs, Costs of Litigation Appeals Against the Government, Selling Costs, and Alcoholic Beverage Costs.

EFFECTIVE DATE: April 7, 1986.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405. Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The cost principles revisions in this FAC are based upon the requirements of Title IX, section 911, and Title XV, Section 1534, Pub. L. 99-145. The Statute specifically applies to Department of Defense and Department of Energy covered contracts exceeding \$100,000. Because of the practical necessity to establish uniform cost principles, the applicability of the revisions has been extended to all contracts to which the commercial cost principles are applicable, including the contracts of all civilian agencies.

B. Public Comments

Notices of proposed rules were published in the Federal Register requesting Government agencies, private firms, associations, and the general public to submit comments to be considered in the formulation of the final rules.

FAC 84-15, Item I, Corporate Aircraft Costs. On March 5, 1985, a notice of proposed rule was published in the

Federal Register (50 FR 8752). As a result of the notice, 34 comments were received and considered.

FAC 84-15, Item II, Public Relations Costs. On February 21, 1985, a notice of proposed rule was published in the Federal Register (50 FR 7199). As a result of the notice, 42 comments were received and considered.

FAC 84-15, Items III through XI

Notices of proposed rules were published in the Federal Register on October 9, 1985 (50 FR 41179), December 3, 1985 (50 FR 49662-49664), December 19, 1985 (50 FR 51776-51779), December 24, 1985 (50 FR 52727), and December 27, 1985 (50 FR 53088). The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council have considered the public comments solicited.

B. Paperwork Reduction Act

FAC 84-15, Item I, Corporate Aircraft Costs

The information collection requirements contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501, et seq. and have been assigned clearance number 9000-0079 (see FAR 1.105).

FAC 84-15, Items II through XI

The Paperwork Reduction Act does not apply because these final rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

C. Regulatory Flexibility Act

FAC 84-15, Item I, Corporate Aircraft Costs

The revisions to FAR 31.109 and 31.205-46 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1985 (5 U.S.C. 601, et seq.) because: (i) The revised rule with respect to commercial airfares does not change existing policy with respect to utilization of the most economical fare suitable to the circumstances. The rule needed to be rewritten and clarified because of the proliferation of airline fare classes from essentially one premium class (i.e., first class) to many different classes; and (ii) the revised rule regarding travel by contractor-owned, -leased, or -chartered aircraft is expected to impact primarily large entities where the use of this means of employee transportation is

estimated to be more widespread than among small businesses.

FAC 84-15, Item II, Public Relations Costs

The revisions to FAR 31.109 and 31.205-1 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because: (i) They will not impose any additional recordkeeping requirements; (ii) they will not cause additional costs in order to comply; and (iii) the unallowable public relations-type costs treated in these revisions are not the type of costs that are commonly incurred by small businesses in significant amounts.

FAC 84-15, Item III, Compensation for Personal Services

This revision to FAR 31.205-8(b) will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because: (i) Most supplies and services obtained from small entities are acquired on a competitive fixed-price basis and the cost principles do not apply. For the remainder of supplies and services that are obtained from small entities, the cost principles are primarily used to establish negotiation objectives; (ii) it does not mandate the disallowance of any cost, but merely provides more detailed ground rules for judging the reasonableness of compensation costs; and (iii) no specific comments were received from small entities indicating a significant impact.

FAC 84-15, Item IV, Company-Furnished Automobiles

The revisions to FAR 31.205-6 and 31.205-46 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because: (i) Most supplies and services obtained from small entities are acquired on a competitive fixed-price basis and the cost principles do not apply. For the remainder of supplies and services that are obtained from small entities, the cost principles are primarily used to establish negotiation objectives; (ii) the administrative burden of identifying the unallowable cost is not expected to increase because Internal Revenue Service rules already require such identification; and (iii) no specific comments were received from small entities indicating a significant impact.

FAC 84-15, Item V, Nominal Changes to FAR 31.2 and Item IX, Costs of Litigating Appeals Against the Government

The revisions to FAR 31.205-8, 31.205-15, 31.205-33, and 31.205-47 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because: (i) Most supplies and services obtained from small entities are acquired on a competitive fixed-price basis and the cost principles do not apply. For the remainder of supplies and services that are obtained from small entities, the cost principles are primarily used to establish negotiation objectives; (ii) the Equal Access to Justice Act will permit small businesses to recover their legal costs under certain circumstances; and (iii) no specific comments were received from small entities indicating a significant impact.

FAC 84-15, Item VI, Employee Morale, Health, Welfare, Food Service, and Dormitory Costs and Credits

This revision to FAR 31.205-13 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because: (i) Most supplies and services obtained from small entities are acquired on a competitive fixed-price basis and the cost principles do not apply. For the remainder of supplies and services that are obtained from small entities, the cost principles are primarily used to establish negotiation objectives; (ii) the size and incidence of company-provided cafeterias correlate generally to business size; and (iii) no specific comments were received from small entities indicating a significant impact.

FAC 84-15, Item VIII, Executive Lobbying Costs

The revisions to FAR 31.205-22 and 31.205-50 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because: (i) Most supplies and services obtained from small entities are acquired on a competitive fixed-price basis and the cost principles do not apply. For the remainder of supplies and services that are obtained from small entities, the cost principles are primarily used to establish negotiation objectives; (ii) few entities of any size engage in improper executive branch lobbying activities; and (iii) no specific comments were received from small entities indicating a significant impact.

FAC 84-15, Item VII, Membership Costs, Item X, Selling Costs and Item XI, Alcoholic Beverage Costs

The revisions to FAR 31.205-14, 31.205-38, and 31.205-51 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because: (i) Most supplies and services obtained from small entities are acquired on a competitive fixed-price basis and the cost principles do not apply. For the remainder of supplies and services that are obtained from small entities, the cost principles are primarily used to establish negotiation objectives; and (ii) no specific comments were received from small entities indicating a significant impact.

List of Subjects in 48 CFR Parts 1 and 31 Government procurement.

Dated: April 7, 1986.

Harry S. Rosinski,
Deputy Director, Office of Federal
Acquisition and Regulatory Policy.

Unless otherwise specified, all
Federal Acquisition Regulation (FAR)
and other directive material contained
in FAC 84-15 is effective immediately.

Eleanor R. Spector,
Deputy Assistant Secretary of Defense for
Procurement.

Paul Trause,
Acting Administrator.

S.J. Evans.

Assistant Administrator for Procurement.

Federal Acquisition Circular (FAC)
84-15 amends the Federal Acquisition
Regulation (FAR) as specified below.
The following is a summary of the
amendments.

Item I—Corporate Aircraft Costs

FAR 31.109, Advance agreements, is amended in paragraph (h) to include travel via contractor-owned, leased, or chartered aircraft. FAR 31.205-46, Travel costs, is revised to: (1) Redefine unallowable commercial airfare costs, (2) establish revised criteria for allowing corporate aircraft costs, (2) establish revised criteria for allowing corporate aircraft costs, and (3) require that a manifest/log for all flights of corporate aircraft be maintained and made available as a condition for recovery of costs.

Item II—Public Relations Costs

FAR 31.109, Advance agreements, is amended in paragraph (h) to include public relations and advertising costs. FAR 31.205-1, Advertising costs is retitled Public relations and advertising costs, and is revised to add coverage on

public relations to the existing coverage on advertising. These changes will provide explicit coverage on public relations in the contract cost principles. The added language defines public relations and provides specific allowability criteria.

Item III—Compensation for Personal Services.

FAR 31.205-8, Compensation for personal services, is amended in paragraph (b) to provide more detailed guidelines for assessing the reasonableness of contractor compensation practices, and for dealing with possible Government challenges to their reasonableness. First, the previous language, which could be read as implying that "total compensation" was the only appropriate object for reasonableness judgments, has been replaced with language making clear that such judgments can be made on any part of a compensation program. Under the new language, the contractor can, however, within certain specified limits, introduce into consideration other, possibly "offsetting," compensation elements when the reasonableness of some part of a compensation program is challenged. Second, the revised language adds several items to the list of criteria that may be considered when judging the reasonableness of compensation, and also makes clearer that this list is not to be read as either all-inclusive or as meaning that passing any one of the specified criteria is sufficient to establish the reasonableness of a compensation practice. Third, the revised language makes clear that contractor compensation practices and their costs enjoy no "presumption of reasonableness" once challenged by the Government.

Item IV—Company Furnished Automobiles

FAR 31.205-8, Compensation for personal services, and 31.205-46, Travel costs, are amended to state that the cost of contractor-owned or -leased automobiles is allowable, if reasonable, to the extent that the automobiles are used for company business. Additional language states that the portion of the cost of company-furnished automobiles that relates to personal use by employees is compensation for personal services and is unallowable. The Government believes it is inappropriate to reimburse contractors for their employees' personal costs.

Item V—Nominal Changes to FAR 31.2

The revised coverage is intended to comply with the provisions of Pub. L. 99-145, which identifies contributions or donations, fines and penalties, and defense of fraud proceedings as costs which "are not allowable under a covered contract." The Statute also authorized amendments to regulations to provide appropriate definitions, exclusions, limitations, and qualifications. FAR 31.205-8, Contributions or donations, is amended to add the words "including cash, property and services, regardless of recipient." FAR 31.205-15, Fines and penalties, is amended to add the word "foreign" before "laws and regulations." FAR 31.205-47, Defense of fraud proceedings, is amended to add the parenthetical phrase "including filing of a false certification" to paragraph (b), and in paragraph (d) to add the phrase "including directly associated costs."

Item VI—Employee Morale, Health, Welfare, Food Service, and Dormitory Costs and Credits

FAR 31.205-13, Employee morale, health, welfare, food service, and dormitory costs and credits, is amended in paragraph (b) to broaden the considerations available to contracting officers when administering the prohibition against allowability of losses on contractor-operated cafeteria and lodging operations. The revision is intended to draw attention to the negative impacts of reductions of cafeteria volume or cessation of operations. When workers eat away from the contractor's property, the result may well be longer lunch periods. When cafeteria operations are closed, many of the fixed occupancy costs do not diminish but are simply absorbed into other indirect cost pools of the contractor's operation. Strict adherence to break-even cafeteria pricing policies can start a slide into lost volume, even higher prices, more lost volume . . . and finally cafeteria closure. The revision is intended to permit more businesslike evaluations of these operations than would have been permitted by a literal reading of the prior coverage.

Item VII—Membership Costs

FAR 31.205-14, Entertainment costs, is amended to make contractor costs of membership in social, dining, or country clubs unallowable. The newly added language makes such costs unallowable whether or not they are reported as taxable income to the employees enjoying the privilege of membership.

Item VIII—Executive Lobbying Costs

FAR 31.205-50, Executive lobbying costs, is added to disallow costs incurred to improperly influence executive branch officials of the Federal Government to give consideration or to act on a regulatory or contract matter. FAR 31.205-22, Lobbying Costs, is retitled Legislative lobbying costs, to distinguish that subsection's coverage on legislative lobbying from the new cost principle's coverage on executive branch lobbying.

Item IX—Costs of Litigating Appeals Against the Government

FAR 31.205-33, Professional and consultant service costs, is amended in paragraphs (d) and (f) to make unallowable costs which are incurred: (1) In defense against Government claims or appeals, and (2) the prosecution of appeals against the Government, and thereby assure consistent treatment of these costs. Further, a new subparagraph makes unallowable those costs which arise from lawsuits or appeals between contractors arising from either an agreement or contract concerning a teaming arrangement, a joint venture or similar arrangement, or dual sourcing, co-production or similar programs, unless incurred in compliance with the specific terms and conditions of the contract or written instructions from the contracting officer.

Item X—Selling Costs

FAR 31.205-38, Selling costs, is revised in order to comply with the clarification mandate of Pub. L. 99-145. The revised coverage clarifies that elements of selling which are covered elsewhere in the cost principles, such as advertising costs, are governed by those other more specific rules rather than the selling cost principle. Allowable residual selling cost is limited to the cost of efforts to market particular products to particular customers. The coverage is also intended to reduce the negotiable range of selling cost, as well as achieve compatibility with the newly adopted coverage relating to advertising and public relations (see Item II).

Item XI—Alcoholic Beverage Costs

FAR 31.205-51, Costs of alcoholic beverages, is added to make the costs of alcoholic beverages specifically unallowable.

Therefore, 48 CFR Parts 1 and 31 are amended as set forth below.

1. The authority citation for 48 CFR Parts 1 and 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding, in numerical order, a FAR segment and a corresponding OMB Control Number to read as follows:

1.105 OMB Approval under the Paperwork Reduction Act.

FAR segment	OMB Control No.
31.205-46	8800-8079

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 31.109 is amended by revising subparagraph (h)(8) and by adding subparagraph (h)(16) to read as follows:

31.109 Advance agreements.

(h) . . .

(8) Travel and relocation costs, as related to special or mass personnel movements and, as related to travel via contractor-owned, -leased, or -chartered aircraft;

(16) Costs of public relations and advertising.

4. Section 31.205-1 is revised to read as follows:

31.205-1 Public relations and advertising costs.

(a) "Public relations" means all functions and activities dedicated to—

(1) Maintaining, protecting, and enhancing the image of a concern or its products; or

(2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term public relations includes activities associated with areas such as advertising, customer relations, etc.

(b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this subsection, regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards.

window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) of this subsection.

(d) The only advertising costs that are allowable are those specifically required by contract, or that arise from requirements of Government contracts and that are exclusively for—

(1) Recruiting personnel required for performing contractual obligations, when considered in conjunction with all other recruitment costs (but see 31.205-34);

(2) Acquiring scarce items for contract performance; or

(3) Disposing of scrap or surplus materials acquired for contract performance.

Costs of this nature, if incurred for more than one Government contract or both Government work and other work of the contractor, are allowable to the extent that the principles in 31.201-3, 31.201-4, and 31.203 are observed.

(e) Allowable public relations costs include the following:

(1) Costs specifically required by contract.

(2) Costs of—

(i) Responding to inquiries on company policies and activities;

(ii) Communicating with the public, press, stockholders, creditors, and customers; and

(iii) Conducting general liaison with news media and Government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information, etc.

(3) Costs of participation in community service activities (e.g., blood bank drives, charity drives, savings bond drives, disaster assistance, etc.).

(4) Costs of plant tours and open houses (but see subparagraph (f)(5) of this subsection).

(5) Costs of keel laying, ship launching, commissioning, and roll-out ceremonies, to the extent specifically provided for by contract.

(f) Unallowable public relations and advertising costs include the following:

(1) All advertising costs other than those specified in paragraph (d) of this subsection.

(2) Costs of air shows and other special events, such as conventions and trade shows, including—

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings.

(3) Costs of sponsoring meetings, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.

(4) Costs of ceremonies such as corporate celebrations and new product announcements.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities (but see 31.205-13(a), Employee morale, health, welfare, food service, and dormitory costs and credits; 31.205-21, Labor relations costs; 31.205-43(c), Trade, business, technical, and professional activity costs; and 31.205-44, Training and educational costs).

(6) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(7) Costs of memberships in civic and community organizations.

(8) All public relations costs, other than those specified in paragraph (e) of this subsection, whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under 31.205-38(c)), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services. Nothing in this subparagraph (f)(8) modifies the express unallowability of costs listed in subparagraph (f)(2) through (f)(7). The purpose of this subparagraph is to provide criteria for determining whether costs not specifically identified should be unallowable.

(g) Costs made specifically unallowable under this subsection 31.205-1 are not made allowable under subsections of Subpart 31.2 such as 31.205-13, Employee morale, health, welfare, food service, and dormitory costs and credits; 31.205-22, Legislative lobbying costs; 31.205-34, Recruitment costs; 31.205-38, Selling costs; 31.205-43, Trade, business, technical, and

professional activity costs; or 31.205-44, Training and educational costs.

Conversely, costs that are specifically unallowable under these and other subsections of Subpart 31.2 are not made allowable under this subsection.

5. Section 31.205-6 is amended by revising paragraphs (b) and (m) to read as follows:

31.205-6 Compensation for personal services.

(b) *Reasonableness.* (1) The compensation for personal services paid or accrued to each employee must be reasonable for the work performed. Compensation will be considered reasonable if each of the allowable elements making up the employee's compensation package is reasonable. In determining the reasonableness of individual elements for particular employees or classes of employees, consideration should be given to all potentially relevant facts. Facts which may be relevant include general conformity with the compensation practices of other firms of the same size, the compensation practices of other firms in the same industry, the compensation practices of other firms in the same geographic area, the compensation practices of firms engaged in predominantly non-Government work, and the cost of comparable services obtainable from outside sources. While all of the above factors, as well as any other relevant ones, should be considered, their relative significance will vary according to circumstances. For example, in the case of secretarial salaries, conformity with the compensation paid by other firms in the same geographic area would likely be a more significant criterion than conformity with the compensation paid by other firms in the same industry wherever located. In administering this principle, it is recognized that not every compensation case need be subjected in detail to the above or other tests. The tests need be applied only when a general review reveals amounts or types of compensation that appear unreasonable or unjustified. Based on an initial review of the facts, contracting officers or their representatives may challenge the reasonableness of any individual element or the sum of the individual elements of compensation paid or accrued to particular employees or classes of employees. In such cases, there is not presumption of reasonableness and, upon challenge, the contractor must demonstrate the reasonableness of the compensation item in question. In doing so, the

contractor may introduce, and the contracting officer will consider, not only any circumstances surrounding the compensation item challenged, but also the magnitude of other compensation elements which may be lower than would be considered reasonable in themselves. For example, a contractor, if challenged on the amount of base salaries for management, could counter by showing lower than normal end-of-year management bonuses. However, the contractor's right to introduce offsetting compensation elements into consideration is subject to the following limitations:

(i) Offsets will be considered only between the allowable elements of an employee's (or a class of employees') compensation package. For example, excessive management salaries cannot be offset against lower than normal secretarial salaries.

(ii) Offsets will be considered only between the allowable portion of the following compensation elements of employees or classes of employees:

- (A) Wages and salaries.
- (B) Incentive bonuses.
- (C) Deferred compensation.
- (D) Pension and savings plan benefits.
- (E) Health insurance benefits.
- (F) Life insurance benefits.
- (G) Compensated personal absence benefits.

However, any of the above elements or portions thereof, whose amount is not measurable, shall not be introduced or considered as an offset item.

(iii) In considering offsets, the magnitude of the compensation elements in question must be taken into account. An executive bonus that is excessive by \$100,000 is not fully offset by a base salary that is low by only \$25,000. In determining the magnitude of compensation elements, the timing of receipt by the employee must be considered. For example, a bonus of \$100,000 in the current period will be considered as of greater value than a deferred compensation arrangement to make the same payment in some future period.

(2) Compensation costs under certain conditions give rise to the need for special consideration. Among such conditions are the following:

(i) Compensation to (A) owners of closely held corporations, partners, sole proprietors, or members of their immediate families, or (B) persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that salaries are reasonable for the personal services rendered rather than being a distribution

of profits. Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits. For closely held corporations, compensation costs covered by this subdivision shall not be recognized in amounts exceeding those costs that are deductible as compensation under the Internal Revenue Code and regulations under it.

(ii) Any change in a contractor's compensation policy that results in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy. Contracting officers or their representatives should normally challenge increased costs where major revisions of existing compensation plans or new plans are introduced by the contractor, and the contractor—

(A) Has not notified the cognizant ACO of the changes either before their implementation or within a reasonable period after their implementation; and

(B) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the reasonableness of the changes.

(iii) The contractor's business is such that its compensation levels are not subject to the restraints that normally occur in the conduct of competitive business.

(iv) The contractor incurs costs for compensation in excess of the amounts which are deductible under the Internal Revenue Code and regulations issued under it.

(m) *Fringe benefits.* (1) Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. Fringe benefits include, but are not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans. Except as provided elsewhere in Subpart 31.2, the costs of fringe benefit are allowable to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor.

(2) That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see 31.205-46(f)).

6. Section 31.205-8 is revised to read as follows:

31.205-8 Contributions or donations.

Contributions or donations, including cash, property and service, regardless of recipient, are unallowable, except as provided in 31.205-1(e)(3).

7. Section 31.205-13 is amended by revising paragraph (b) to read as follows:

31.205-13 Employee morale, health, welfare, food service, and dormitory costs and credits.

(b) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., (1) Where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or (2) where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

8. Section 31.205-14 is revised to read as follows:

31.205-14 Entertainment costs.

Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable (but see 31.205-1 and 31.205-13). Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

9. Section 31.205-15 is revised to read as follows:

31.205-15 Fines and penalties.

Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, local, or foreign laws and regulations, and unallowable except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

10. Section 31.205-22 is amended by revising the title to read as follows:

31.205-22 Legislative lobbying costs.

11. Section 31.205-33 is amended by revising paragraph (d) and adding paragraph (f) to read as follows:

31.205-33 Professional and consultant service costs.

(d) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with organization and reorganization (also see 31.205-27), defense of antitrust suits, defense against Government claims or appeals, or the prosecution of claims or appeals against the Government (see 33.201) are unallowable (but see 31.205-47). Such costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the contract.

(f) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either: (1) An agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest; or (2) dual sourcing, co-production, or similar programs, are unallowable, except when: (i) Incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer, or (ii) when agreed to in writing by the contracting officer.

12. Section 31.205-38 is revised to read as follows:

31.205-38 Selling costs.

(a) "Selling" is a generic term encompassing all efforts to market the contractor's products or services, some of which are covered specifically in other subsections of 31.205. Selling activity includes the following broad categories:

(1) Advertising.

(2) Corporate image enhancement including broadly-targeted sales efforts, other than advertising.

(3) Bid and proposal costs.

(4) Market planning.

(5) Direct selling.

(b) Advertising costs are defined at 31.205-1(b) and are subject to the allowability provisions of 31.205-1 (d) and (f). Corporate image enhancement activities are included within the definitions of public relations at 31.205-1(a) and entertainment at 31.205-14 and are subject to the allowability provisions at 31.205-1 (e) and (f) and 31.205-14, respectively. Bid and proposal costs are defined at 31.205-18 and have their allowability controlled by that subsection. Market planning involves market research and analysis and generalized management planning concerned with development of the contractor's business. The allowability of long-range market planning costs is controlled by the provisions of 31.205-12. Other market planning costs are allowable to the extent that they are reasonable. Costs of activities which are correctly classified and disallowed under cost principles referenced in this paragraph (b) are not to be reconsidered for reimbursement under any other provision of this subsection.

(c) Direct selling efforts are those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such activities as familiarizing a potential customer with the contractor's products or services, conditions of sale, service capabilities, etc. It also includes negotiation, liaison between customer and contractor personnel, technical and consulting activities, individual demonstrations, and any other activities having as their purpose the application or adaptation of the contractor's products or services for a particular customer's use. The cost of direct selling efforts is allowable if reasonable in amount.

(d) The costs of any selling efforts other than those addressed in paragraphs (b) or (c) of this subsection are unallowable.

(e) Costs of the type identified in paragraphs (b), (c), and (d) of this subsection are often commingled on the contractor's books in the selling expense account because these activities are performed by the sales departments. However, identification and segregation of unallowable costs is required under the provisions of 31.201-6 and CAS 405, and such costs are not allowable merely because they are incurred in connection with allowable selling activities.

(f) Notwithstanding any other provision of this subsection, selling costs incurred in connection with potential and actual Foreign Military Sales as defined by the Arms Export Control Act, of foreign sales of military products or services are unallowable on U.S. Government contracts for U.S. Government requirements.

(g) Notwithstanding any other provision of this subsection, sellers' or agents' compensation, fees, commissions, percentages, retainer or brokerage fees, whether or not contingent upon the award of contracts, are allowable only when paid to bona fide employees or established commercial or selling agencies maintained by the contractor for the purpose of securing business (see 3.406-2).

13. Section 31.205-46 is amended by revising paragraphs (d) and (e) and by adding paragraph (f) to read as follows:

31.205-46 Travel costs.

(d) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth in this paragraph must be documented and justified.

(e)(1) "Cost of travel by contractor-owned, -leased, or -chartered aircraft," as used in this subparagraph, includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs.

(2) The costs of travel by contractor-owned, -leased, or -chartered aircraft are limited to the standard airfare described in paragraph (d) of this subsection for the flight destination unless travel by such aircraft is specifically required by contract specification, term, or condition, or a higher amount is approved by the contracting officer. A higher amount may be agreed to when one or more of the circumstances for justifying higher than standard airfare listed in paragraph (d) of this subsection are applicable, or when an advance agreement under subparagraph (e)(3) of this subsection

has been executed. In all cases, travel by contractor-owned, -leased, or -chartered aircraft must be fully documented and justified. For each contractor-owned, -leased, or -chartered aircraft used for any business purpose which is charged or allocated, directly or indirectly, to a Government contract, the contractor must maintain and make available manifest/logs for all flights on such company aircraft. As a minimum, the manifest/log shall indicate—

- (i) Dated, time, and points of departure;
- (ii) Destination, date, and time of arrival;
- (iii) Name of each passenger and relationship to the contractor;
- (iv) Authorization for trip; and
- (v) Purpose of trip.

(3) Where an advance agreement is proposed (see 31.109), consideration may be given to the following:

- (i) Whether scheduled commercial airlines or other suitable, less costly, travel facilities are available at reasonable times, with reasonable frequency, and serve the required destinations conveniently.
- (ii) Whether increased flexibility in scheduling results in time savings and more effective use of personnel that would outweigh additional travel costs.

(f) Costs of contractor-owned or -leased automobiles, as used in this paragraph, include the costs of lease, operation (including personnel), maintenance, depreciation, insurance,

etc. These costs are allowable, if reasonable, to the extent that the automobiles are used for company business. That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in 31.205-6(m)(2).

14. Section 31.205-47 is amended by revising paragraphs (b) and (d) to read as follows:

31.205-47 Defense of fraud proceedings.

(b) Costs incurred in connection with defense of any: (1) Criminal or civil investigation, grand jury proceeding, or prosecution; (2) civil litigation; or (3) administrative proceedings such as suspension or debarment, or any combination of the foregoing, brought by the Government against a contractor, its agents or employees, are unallowable when the charges, which are the subject of the investigation, proceedings, or prosecution, involve fraud or similar offenses (including filing of a false certification) on the part of the contractor, its agents or employees, and result in conviction (including conviction entered on a plea of nolo contendere), judgment against the contractor, its agents or employees, or decision to debar or suspend, or are resolved by consent or compromise.

(d) Costs which may be unallowable under 31.205-47, including directly associated costs, shall be differentiated and accounted for by the contractor so as to be separately identifiable. During the pendency of any proceeding or investigation covered by paragraph (b) of this subsection, the contracting officer should generally withhold payment of such costs. However, the contracting officer may in appropriate circumstances provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the contractor to repay all unallowable costs, plus interest, if a conviction or judgment is rendered against it.

15. Section 31.205-50 is added to read as follows:

31.205-50 Executive lobbying costs.

Costs incurred in attempting to improperly influence (see FAR 3.401), either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a regulatory or contract matter are unallowable.

16. Section 31.205-51 is added to read as follows:

31.205-51 Costs of alcoholic beverages.

Costs of alcoholic beverages are unallowable.

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